



Report to the Auburn City Council

Action Item

12

Agenda Item No.

City Manager's Approval

To: Mayor and City Council Members
From: Bernie Schroeder, Public Works Director
Prepared by: Amy Lind, Deputy City Clerk
Date: September 12, 2011
Subject: Temporary Art Program

The Issue

Shall the Council look into implementing a program to allow for temporary art pieces in Downtown and Old Town Auburn?

Conclusion and Recommendation

Discussion item, provide direction to staff.

Background

The purpose of this program is to promote public art through the display of art pieces in Downtown and Old Town Auburn.

Initially, public art placed in the pre-determined locations will be handled by a "loan" program. The program maximizes the amount of work to be shown by offering to display rather than purchase art. The program also provides exposure for exhibiting artists and a venue to potentially sell art to interested art collectors.

The program is designed for artists to lend their artwork to the City for two years with a City option for one additional year. Artwork may potentially be exhibited beyond three years if there is a mutual agreement between the City and the artist.

The program is designed to encourage participation by local artists but will also be open to regional and national submissions.

Attachments

- Maintenance Agreement
- Artwork Loan Agreement

MAINTENANCE AGREEMENT
AUBURN DOWNTOWN AND OLD TOWN
PUBLIC ART PROGRAM

I. Identification

- A. This agreement is made and entered into this ____ day of _____,
20____ by and between the City of Auburn, a municipal corporation
("City") and _____ ("Artist").

II. Recitals

- A. The City has established a Downtown and Old Town Public Art Program to promote public art through the display of art works in downtown Auburn.
- B. City and Artist have entered into an Artwork Loan Agreement for the display of Artist's Work. The Work consists of the item described in the Artwork Loan Agreement and attached documents, exclusive of the display construction and base.
- C. The Artwork Loan Agreement requires City and Artist to enter into a separate Maintenance Agreement. This Maintenance Agreement sets forth the nature and extent of maintenance obligations between City and Artist.

III. General Provisions

- A. Maintenance. The maintenance requirements for each Work shall be reviewed and agreed to by the Artist and the City. The agreed-upon maintenance shall be described in the attached documents (Attachment A). The City will perform maintenance as specified in those documents and conformance with this agreement will be City's sole maintenance obligation to Artist.
- B. Liability for Damage Resulting From Maintenance. The City will not be liable to the Artist for damage to the Work arising out of the maintenance required pursuant to this agreement.
- C. Repairs. In the event of damage to the Work, Artist is responsible for the costs of repair. City may conduct necessary repairs in its discretion or coordinate with Artist to repair the Work.

- D. Cleaning. If at any time the Work needs cleaning, City will coordinate with Artist regarding appropriate cleaning methods.
- E. Removal. City reserves the right to have the Work removed in its sole discretion prior to the expiration of the Artwork Loan Agreement if the City deems the Work to be aesthetically unpleasing due to unsatisfactory repairs, Artist refuses to repair any damage, the Work poses a threat to public safety or interferes with the public right of way, or for any other reasons set forth in the Artwork Loan Agreement.

In witness whereof Artist and the City of Auburn, a municipal corporation, by its City Manager, have executed this Agreement in duplicate.

City of Auburn,
a municipal corporation

Artist

Robert Richardson
City Manager

Attest:

Approved as to form:

City Attorney

ARTWORK LOAN AGREEMENT
AUBURN DOWNTOWN AND OLD TOWN
PUBLIC ART PROGRAM

I. Identification

A. This Agreement is made and entered into this _____ day of _____, 20____ by
and between the City of Auburn, a municipal corporation ("City") and
_____("Artist").

II. Recitals

- A. City has established a Downtown and Old Town Public Art Program ("Program")
to promote public art through the display of artwork in Downtown and Old Town
Auburn.
- B. Artist wishes to loan City the artwork ("Work") described and specified in the
attached documentation (Exhibit A) to be displayed as part of the Program.

III. General Provisions

- A. Ownership. Artist retains title to the Work and agrees to lend the Work to the
City for the Program subject to the terms and conditions of this agreement.
- B. Description of Work. The Work accepted for this Program is described as
follows:
- Artist:
- Title:
- Date:
- Medium:
- Size:

Weight:

Insurance value:

Additional descriptions and photographs of the Work for identification purposes are attached as Exhibit A.

- C. Term. The term of this Agreement shall be for two years commencing upon completion of installation of the Work. Following such initial two year term, the City may, at its sole option, extend this Agreement for an additional year. Further extensions to this Agreement after three years require the mutual consent of the parties.
- D. Honorarium. City agrees to pay Artist a \$1,500 honorarium for participation in the Program, said honorarium to be paid 50% upon execution of the Agreement and 50% upon completion of the installation of the Work. This will be the extent of City's monetary obligation to Artist.

E. Installation.

The Work will not be installed until execution of this Agreement and a separate Maintenance Agreement.

City will be responsible for the following:

- a. Reviewing and selecting location sites for pedestrian and traffic safety.
- b. Installing the Work to a pedestal selected for the Work.
- c. Installing a plaque to the pedestal listing the Artist's name and the title of the Work.

Artist will be responsible for:

- a. Designing and installing a base, attached to the Work, of sufficient size and strength to allow installation of the Work and provide structural stability on the selected pedestal. The size of the base shall be coordinated with the chosen representative of the City and the Auburn Arts Commission prior to shipment to the site. The base shall include predrilled holes to

accommodate drill-in or epoxied anchor bolts as deemed necessary to support the Work.

b. Transporting the Artwork to the location site.

F. Removal. City shall remove the Work, or cause it to be removed, within thirty days after expiration of this Agreement. City reserves the right to have the Work removed prior to the expiration of this Agreement if it is deemed at any time to interfere with City operations or if the Artwork creates a health or safety hazard. In either circumstance the Artist will be responsible for collecting the Work within 30 days after receiving notice of removal by the City. If the City determines that the Work must be immediately removed in order to prevent damage to public property or injury to members of the public, Artist shall be responsible for any costs of storage beyond ten days. The City may dispose of the artwork by appropriate means in the event the Artist does not collect the Work within 30 days of receiving notice of removal.

G. Maintenance. City will provide limited ongoing maintenance as set forth in a separate Maintenance Agreement entered into between the City and Artist and incorporated herein by reference. City agrees to exercise the same care of the Work as it does in the maintenance of its own property. City will contact Artist, if the Work is damaged or altered in any way, to discuss responsibility for repairs as established in the Maintenance Agreement.

H. Damage; Wear and Tear. City is not responsible for normal wear and tear which includes, but is not limited to, damage resulting from exposure to the

elements, for gradual deterioration, for any unlawful human actions including vandalism, or for damage due to acts of God.

- I. Sales; Right of First Refusal; Commission Payment. The City shall have the right of first refusal before the Work may be sold. If the Artwork is sold during the term of the Agreement Artist agrees to pay City a ten percent (10%) commission on the sale of the Work. The commission must be paid within thirty days after the sale. No sales transactions between Artist and the buyer may be conducted on City owned or controlled property. All sales transactions of the Work, including but not limited to the collection of sales tax or commissions during the term of this Agreement, shall be handled by Artist and shall be the exclusive responsibility of Artist. Following a sale to a third party, Artist must give City ninety days notice prior to removal of the Work to allow City time to remove the Work and to find replacement artwork.
- J. Copyright. Artist represents to City that Artist owns the copyright for the Work. Artist grants to the City a non-exclusive, unlimited and irrevocable license to make, and to authorize the making of, photographs and other two-dimensional reproductions of the Work for all promotional uses including advertising, educational and promotional materials. Artist additionally releases and assigns to the City any and all rights of authorship that might ever exist pursuant to the federal Visual Artists Rights Act, 17 U.S.C. § 106(a) and the California Art Preservation Act, California Civil Code § 987.
- K. Marketing. The City will create marketing materials that acknowledges the Work and Artist, notes a purchase price (assuming Artist is offering the Work

for sale) and details the location of all artwork included in the Program. The type, style and frequency of the marketing will be at the sole discretion of the City. This marketing might include, but not be limited to, brochures, published advertisements and the city website. The City agrees that these rights shall be exercised in accordance with the California Art Preservation Act (California Civil Code Section 987).

L. Other Agreements. Artist warrants that loan and exhibition of the Artwork does not violate the terms of any other agreement or obligations.

M. Insurance. Artist shall provide insurance for the Work. The estimated insurance value of the Work is \$_____. Proof of insurance shall be provided to City prior to installation of the Work. Artist understands that City does not carry a specific policy of insurance to cover works of art or other property lent to City for the Program. Artist further understands and agrees that, although every precaution will be taken to protect the Work, Artist will not hold the City, its officers, employees, agents or volunteers responsible for damage, lost or theft of the Work. City makes no guarantee or warranty of agreement to indemnify Artist in the event of damage, loss or theft of the Work.

N. Indemnification. To the greatest extent permitted by law, Artist shall defend, indemnify, save and hold harmless City, its officers, agents, employees and volunteers from any claims, suits or actions of every name, kind and description brought forth or on account of injuries to or death of any person, including but not limited to workers and the public, or damage to property resulting from or arising out of Artist's loaning of the Work for the Program, except those matters

arising from City's sole, active negligence. Artist further shall defend and hold harmless City, its officers, agents, employees and volunteers from any claims of copyright violation or infringement resulting from the display or reproduction of the Work or reproduction of visual depictions of the Work.

O. Notices. Any notices to parties required by this Agreement shall be delivered personally or mailed, U. S. first class, postage prepaid, addressed as follows:

City of Auburn

Artist

Auburn Arts Commission
City of Auburn
1225 Lincoln Way.
Auburn, CA 95603

With a courtesy copy to:

Michael Colantuono
City Attorney
11364 Pleasant Valley Rd.
Penn Valley, CA 95946

P. Integrated Agreement. This is an integrated agreement and contains all of the terms, considerations, understanding and promises of the parties. It shall be read as a whole.

In witness whereof, the City of Auburn, a municipal corporation, has executed this agreement in duplicate by its City Manager and Artist has caused this Agreement to be duly executed.

City of Auburn,
a municipal corporation

Artist

Robert Richardson
City Manager

Attest:

Approved as to form:

City Attorney